

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

SYLVESTER BARNES,	:	
Plaintiff	:	
	:	
vs.	:	
	:	
	:	NO.:
AMERICAN MODERN SELECT	:	
INSURANCE COMPANY,	:	
Defendant	:	

NOTICE OF REMOVAL

Defendant American Modern Select Insurance Company, by and through its undersigned counsel, hereby petitions this Court as follows, pursuant to 28 U.S.C. § 1332 et seq.:

1. American Modern Select Insurance Company is a Defendant in an action pending in the Pennsylvania Court of Common Pleas for Philadelphia County, No. 200800947 (“the State Court Action”).

2. Plaintiff filed a Complaint on or about January 18, 2021 asserting two (2) causes of action – one for breach of contract, and the other for violation of the bad faith statute - 42 Pa.S.C.A. § 8371 arising out of an alleged failure to fully compensate Plaintiff for a property damage loss. A true and correct copy of the Complaint in the State Court Action is attached hereto as Exhibit “A”.

3. Pursuant to 28 U.S.C. § 1332(a)(1), “[t]he district court shall have original jurisdiction of all civil actions where the matter in controversy exceeds the sum or value of \$75,000, exclusive of interest and costs, and is between (1) citizens of different states.”

4. As defined in 28 U.S.C. § 1332(c), “[f]or the purposes of this section and section 1441 of this title [28 USCS § 1441]— (1) a corporation shall be deemed to be a citizen of every

State and foreign state by which it has been incorporated and of the State or foreign state where it has its principal place of business...”

5. Moreover, 28 U.S.C. § 1441(b)(2) provides that “[a] civil action otherwise removable solely on the basis of the jurisdiction under section 1332(a) of this title [28 USCS § 1332(a)] may not be removed if any of the parties in interest properly *joined and served* as defendants is a citizen of the State in which such action is brought.”

6. Therefore, in order for the State Court Action to be properly removed, (1) it must be between citizens of different states, (2) moving defendant must not be a citizen of Pennsylvania, and (3) the amount in controversy must exceed \$75,000.

7. First, Plaintiff in the State Court Action is Sylvester Barnes alleged to be a citizens and residents of the Commonwealth of Pennsylvania. *See* Ex. A, ¶1.

8. American Modern Select Insurance Company is an Ohio corporation with its principal place of business at 7000 Midland Boulevard, Amelia, Ohio.

9. Accordingly, the State Court Action is between citizens of different states as required by 28 U.S.C. § 1332(a)(1) which satisfies the first requirement for removal.

10. Moreover, the second requirement for removal is met because American Modern Select Insurance Company is not a citizen of the Commonwealth of Pennsylvania.

11. As for the third requirement, in the First Count – Bad Faith, Plaintiff seeks an amount in excess of \$75,000, together with costs, interest, attorney’s fees, punitive damages and special damages, and for the Second Count – Breach of Contract, an amount in excess of \$75,000, together with costs, interest and attorney’s fees. *See* Ex. A.

12. When both actual and punitive damages are available, “punitive damages are properly considered in determining whether the jurisdictional amount has been satisfied.” *Mulcher*

v. Greenwald, 624 F. App'x 794, 798 (3d. Cir. 2015) (quoting *Packard v. Provident Nat'l Bank*, 994 F.2d 1039, 1046 (3d Cir. 1993)).

13. To that end, interest “in an amount equal to the prime rate of interest plus 3%[,]” attorney’s fees, and court costs shall be assessed *in addition to punitive damages* under Section 8371. 42 Pa.S.C.A. § 8371(1)-(3).

14. Thus, due to the allegations in Plaintiff’s Complaint, it is believed and, therefore, averred that Plaintiff are seeking to recover in excess of \$75,000 in this matter which satisfies the third requirement for removal. *See* Ex. A.

15. Therefore, this Court may properly remove the State Court Action based on diversity jurisdiction.

16. This Notice has been filed with the Court within thirty (30) days after the filing of the Complaint.

WHEREFORE, interest, court costs, counsel fees and damages for prays that the State Court Action be removed from the Pennsylvania Court of Common Pleas for Philadelphia County to this Court for proper and just determination.

CHARTWELL LAW OFFICES

BY: /s/ Hema P. Mehta
HEMA P. MEHTA
Attorney for Defendant American Modern Select
Insurance Company

Dated: February 5, 2021

CERTIFICATE OF SERVICE

I, **HEMA P. MEHTA, ESQUIRE**, hereby certify that a true and correct copy of the foregoing Notice of Removal was served this day, via ECF Filing system, electronic and/or first-class mail, upon the following individual:

Martin A. Durkin, Esquire
Durkin Law Office, P.C.
1760 Market Street, Suite 601
Philadelphia, PA 19103
Attorney for Plaintiff

CHARTWELL LAW OFFICES

BY: /s/ Hema P. Mehta
HEMA P. MEHTA

Dated: February 5, 2021